APPENDIX 1

EXCERPTS FROM VOIR DIRE EXAMINATION

Questions herein are put by Assistant State's Attorney unless otherwise indicated.

636 CLIFFORD SALAZAR

640 Q. And, in this State, the penalties prescribed by law, which the jurors must consider in every case where 641 the charge is murder, is death in the chair, life, fourteen years or any number of years more than fourteen. Do you understand that?

A. Yes, sir.

Q. Now, is there anything about the fact that you, as a juror, would have the duty to determine guilt or innocence and also fixing a penalty which you feel would be an unusual or difficult burden for you to assume?

A. Not that I know of.

* * *

642 Q. Now, listen carefully to what I'm asking you. Do you have a conscientious or religious scruple against the infliction of the death penalty in a proper case?

A. I don't understand the question.

The Court: Q. What he means by that is: If the evidence in this case convinces you the defendant should be subjected to the death penalty, is there anything in your background, religious scruples or otherwise, that would hinder you from rendering such a verdict; that is, providing the evidence warranted it? 643 That's what counsel means.

A. I can't answer that question. I don't know what you mean.

The Court: You have to answer it.

State it to him again. Probably he doesn't understand it. You can probably explain it better than I can. Go ahead, counsel.

Mr. Kissane: Q. What the Judge is asking and what I'm asking—

And, as the Judge indicated, you must answer these questions so we can determine and you can determine if you should serve as a juror in this case. Do you understand that?

A. Yes.

Q. That's preliminary. What the Judge and I are asking is this: If you're one of the twelve jurors, our testimony will be developed on the witness stand, and then, when all the witnesses are through testifying, his Honor, Judge Salter, will give you the rules of law that apply to a charge such as this, and then you and the other eleven would retire to the jury room. And if it should be your opinion, along with the other eleven jurors, all twelve of you agree that the defen-
644 dant Witherspoon is guilty of murder and that death in the chair is a proper verdict, would you say so by signing a guilty verdict?

A. No, sir.

The Court: In other words, you don't believe that you would vote to inflict the death penalty in any case?

A. No.

Q. In other words, what counsel is getting at is this: If you have a conscientious or religious scruple against the infliction of the death penalty, say so to the gentleman.

A. Yes, sir.

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644 JOSEPH E. SANDERS

645 The Court: Q. . . . Do you have any conscientious scruples against the infliction of the death penalty in a proper case?

A. No, sir.

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649 Q. Do you understand, sir, that if you're one of the twelve jurors in this case, the penalties you are required to consider as a juror are death in the chair, life or any number of years more than fourteen? Do you understand that?

A. Yes, I do.

Q. Now, is there anything about those penalties that would affect your service here as a juror?

A. No, sir.

• • • •

650 Q. Now, do you have a conscientious or religious scruple against the infliction of the death penalty in a proper case?

A. No, sir.

Q. If you're one of the twelve jurors and you have heard all the evidence testified to on the witness stand, the rules of law as given by the presiding judge, you
651 retire to the jury room and it should be your opinion, along with the other eleven jurors, that the defendant Witherspoon is guilty of the charge of murder, and death in the chair is a proper verdict in this case, under the law and the evidence, would you say so by signing a guilty verdict?

A. Yes, sir.

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651 CARRIE B. McCRAY

• • •

653 Q. Do you have any prejudice against the death penalty in a proper case?

A. No, sir.

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Mr. Kissane: Do you have conscientious or religious scruples against the infliction—

654 The Court: She has already answered that. She said "No." She said, in a proper case, she has no conscientious scruples against the infliction of the death penalty.

• • •

655 Q. And if the State proves the defendant guilty of the charge of murder and it should be your opinion, along with the other eleven jurors, that the defendant is guilty of murder and the proper penalty under the law and the evidence in this case is that of death in the chair, would you say so by signing a guilty verdict?

A. Yes, sir.

Q. And fixing the penalty at death in the chair?

A. Yes.

• • •

RUTH ANNA O'REILLY

• • •

657 Q. Do you have a conscientious or religious scruple against the infliction of the death penalty in a proper case?

A. No, sir.

• • •

659 Q. If you're one of the twelve jurors, Mrs. O'Reilly, and all the testimony has been completed on the witness stand, and his Honor has instructed you, and you

retire to the jury room, and it should be your opinion, along with the other eleven jurors, that the defendant Witherspoon is guilty of murder and that death in the chair is a proper verdict in this case, would you so say by signing a guilty verdict?

A. Yes.

Q. And fixing the penalty at death in the chair?

A. Yes, sir.

* * *

660 BERTHA PRITCHARD

* * *

661 Q. Do you have a conscientious or a religious scruple against the infliction of the death penalty in a proper case?

A. I do.

Mr. Kissane: Cause, Judge.

The Court: All right, stand aside.

(Juror excused.)

* * *

The Court: Q. Now, counsel, I suggest that you ask that question at the very first. There's no need to question a juror for five minutes and then find out that the juror has a religious scruple against the death penalty. Get that out of the way first.

PETER F. COSENZA

* * *

Q. Do you have a conscientious or a religious
662 scruple against the infliction of the death penalty in a proper case?

A. Yes.

Mr. Kissane: Cause, Judge.

The Court: All right, step aside.

(Prospective juror excused.)

* * *

JOHN M. KRIZ

* * *

663 The Court: Let's get these conscientious objectors out of the way, without wasting any time on them. Ask him that question first.

Mr. Kissane: Yes, sir.

Q. Mr. Kriz, do you have a conscientious or a religious scruple against the infliction of the death penalty in a proper case?

A. No, not in a proper case.

Q. Now, if it should be your opinion, along with the other eleven jurors, and you're one of the twelve in this case, do you understand that the only thing you are to consider is what the facts are as to what is testified to under oath and that then you follow the rules of law as given by his Honor Judge Salter and you retire to the jury room and, based on the evidence as you have heard it here in the courtroom, the rules
664 of law as given by the presiding judge, it should be your opinion, along with the other eleven jurors, that the defendant Witherspoon is guilty of murder and that the proper penalty is that of death in the chair, would you so say by signing a guilty verdict?

A. Yes, sir.

* * *

665 Q. Do you understand, sir, that in this particular type of case, where the charge is murder, the jury has a two-fold function, to determine the guilt or innocence of a particular defendant and also to fix a pen-
666 alty prescribed by law? And in this State the penalties are death in the chair, life, fourteen years or any number of years more than fourteen, such as 199 or a 100 years. You understand that, don't you?

A. Yes, sir.

Q. Is there anything about those penalties, that you are required to consider under your oath as a juror, that would affect your service here?

A. Would mind repeating that?

Q. Yes. Is there anything about the fact that the penalties you're required to consider in this State, namely, death in the chair, life, any number of years more than fourteen, that would affect your service here as a juror?

A. No, sir.

* * *

667 VIOLET C. LAYMAN

* * *

668 Q. Do you have a conscientious or religious scruple against the infliction of the death penalty in a proper case?

A. Yes, I do.

The Court: Now, you see, you should have asked that first.

Step aside.

(Prospective juror excused.)

* * *

VICTORIA HETZEL

* * *

669 Q. Do you have a conscientious or religious scruple against the infliction of the death penalty in a proper case?

A. No, sir.

* * *

672 Mr. Kissane: Q. Now, if you're one of the twelve jurors and it should be your opinion, based on the evidence as you hear it testified to on the witness

stand, the rules of law as given by his Honor, and you're back in the jury room and it should be your opinion, along with the other eleven, that Witherspoon is guilty of murder and, based on the evidence and the law in this case, death in the chair is the proper verdict, would you so say by signing a guilty verdict?

A. I would, sir.

Q. And by fixing the penalty at death in the chair?

A. Yes, sir.

682 CASIMIR A. MLYNIEC

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684 Prospective Juror Mlyniec: I couldn't go all the way, though, because I couldn't see to put a man to death.

Mr. Cronin: Cause, your Honor.

Mr. Cernek: Let the State inquire.

The Court: Q. In other words, you have a con-
685 scientious scruple against the infliction of the death penalty in a proper case?

Juror Mlyniec: Yes, sir.

The Court: Q. Regardless of the evidence. In no case would the evidence be strong enough to satisfy you that the death penalty should be inflicted?

A. Yes, sir.

The Court: All right, challenge for cause. Step aside.

(Prospective juror excused.)

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685 OLEH KURITZA

Mr. Cernek: Q. Would the gentleman give me your name?

A. Oleh Kuritza, K-u-r-i-t-z-a.

I want to make a statement. I do not believe in capital punishment.

Mr. Cronin: Cause, your Honor.

The Court: Q. Is that a correct statement of your beliefs?

A. That's a correct statement, your Honor.

Q. Or do you want to get off this jury?

A. No. This is my conscientious objection.

686 The Court: All right, a challenge for cause is granted.

(Prospective juror excused.)

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GENEVIEVE WISNIEWSKI

The Court: Counsel, if you will permit me.

Q. Do you have any conscientious scruples or any religious scruples against the infliction of the death penalty in a proper case?

A. Yes, sir.

Q. You do?

A. Yes.

687 Mr. Cronin: Cause, your Honor.

The Court: Challenge for cause is granted. Step aside.

(Prospective juror excused.)

MARIE STELLA

* * *

The Court: Q. Let me cut in here and let me ask you this question: Do you have any religious or conscientious scruples against the infliction of the death penalty?

A. No.

Q. It isn't proper for a defense counsel to ask 688 that and I want to ask it so we will save time. If

you do have, why, we don't care about going into your background.

A. No.

* * *

709 HELEN HEIMANN

* * *

Q. Mrs. Heimann, do you have a conscientious or religious scruple against the infliction of the death penalty in a proper case?

A. No.

* * *

710 Q. Now, if you're one of the twelve jurors and you have heard all of the testimony that has been developed on the witness stand, his Honor has instructed you and you retire to the jury room, and it should be your opinion, along with the other eleven jurors, that this defendant Witherspoon is guilty of the murder of Officer Stone and, further, that the death in the chair is a proper penalty in this case, based on the evidence as you have heard it and the rule of law as given by his Honor, will you say so by signing a guilty verdict?

A. I will.

* * *

713 JULIA DARCY

* * *

714 Q. Do you have a conscientious or religious scruple
715 against the infliction of the death penalty in a proper case?

A. I have a religious scruple.

Mr. Kissane: Cause, Judge.

The Court: Q. In other words, did I understand you to say that you wouldn't vote for the death penalty in any case regardless of the evidence?

A. Yes, sir.

Q. We haven't heard the evidence here yet. We don't know what it will be but it will be developed from the witness stand. But I understand that your position is that you have a religious scruple against the infliction of the death penalty in any case?

A. Yes, sir.

The Court: Challenge for cause is granted. Step aside.

(Prospective juror excused.)

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715 ERNA FORMANEK

* * *

716 Q. (Continuing)—do you have a conscientious or a religious scruple against the infliction of the death penalty in a proper case?

A. No, I haven't.

* * *

719 Q. Now, if your're selected as one of the twelve jurors, and after you have heard all the witnesses testify on the witness stand, his Honor has instructed you as to the rules of law and you retire to the jury room,
720 it should be your opinion, along with the other eleven, that the defendant Witherspoon is guilty of the murder of Officer Stone and that the proper verdict in this case should be death in the chair, based on the evidence as you have heard it here and the rules of law as given by His Honor, would you so say by signing a guilty verdict?

A. Yes, I would.

Q. And would you so say by fixing death in the chair as being the proper penalty, based upon the law and the evidence in this case?

A. Yes, I would.

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720 BLANCHE CARLSON

• • •

723 Q. Do you have a conscientious or religious scruple against the infliction of the death penalty in a proper case?

A. No.

• • •

Q. If you're selected as one of the twelve jurors and it should be your opinion, along with the other
723-A jurors, after you heard all the testimony on the witness stand and the rules of law given by his Honor and you're back in the jury room deliberating on the verdict and you find that the defendant Witherspoon is guilty of killing Officer Mitchell Stone and that the proper verdict in this case, based on the law and the evidence, is death in the chair, would you so say by signing a guilty verdict?

A. Yes, I would.

723-A MARY SCOLARO

• • •

Q. Do you have a conscientious or religious scruple against the infliction of the death penalty in a proper case?

A. Yes, I do.

724 Mr. Kissane: Cause, Judge.

The Court: All right, stand aside.

(Prospective juror excused.)

• • •

724 CECELIA LOHMEIER

* * *

725 Q. Do you have a conscientious or a religious scruple against the infliction of the death penalty in a proper case?

A. No, sir.

* * *

728 Q. Now, if you're selected as one of the twelve jurors, after having heard all the evidence and the rules of law as given by his Honor, and you're back in the jury room, and it should be your opinion, along with the other eleven, that the defendant Witherspoon is guilty of the murder of Officer Stone, and the proper penalty, under the law and the facts in this case, is that of death in the chair, would you so say by signing a guilty verdict and fixing death in the chair as the penalty?

A. Yes.

* * *

729 BEATRICE DUNCAN

* * *

Q. Do you have a conscientious or religious scruple against the infliction of the death penalty in a proper case?

A. I do.

Mr. Kissane: Cause.

The Court: Stand aside.

(Prospective juror excused.)

* * *

730 JOHN BOORTZ

• • •

Q. Did any of the questions asked of any of the preceding jurors bring anything to your mind that indicated to you you cannot be a fair and impartial juror?

A. Well, I don't believe in the death penalty.

Q. Do you have a conscientious or religious scruple against the infliction of the death penalty?

A. I have.

Mr. Kissane: Cause, Judge.

The Court: Step aside.

(Prospective juror excused.)

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734 VITO MATTHEW CALAMIA

• • •

Q. Do you have a conscientious scruple against the infliction of the death penalty in a proper case?

A. No, I don't.

Q. Do you have a religious scruple against the infliction of a death penalty in a proper case?

A. No, I haven't.

• • •

738 Q. If you should be one of the twelve jurors and you're back in the jury room and it should be your opinion, along with the other jurors, that Witherspoon is guilty of the charge of the murder of Officer Stone and that death in the chair was a proper verdict, would you so say by signing a guilty verdict and fixing the penalty at death in the chair?

A. Yes, I will.

• • •

LLOYD BOHL

* * *

739 Q. Do you have a conscientious scruple against the infliction of the death penalty in a proper case?

A. Yes, I do.

Mr. Kissane: Cause, your Honor.

The Court: All right. Call another juror.

(Prospective juror excused.)

* * *

742 The Court: . . . We want to get fair jurors for both sides.

The charge of murder is probably the simplest charge on the statute book. It's the unlawful killing of another human, so there is nothing complicated about it, and I think we should show some speed now and finish picking this jury. Since the State is qualifying for the death penalty, I ask you ladies and gentlemen of the jury in the box, do any one of you sitting there now have a religious or conscientious scruple against the infliction of the death penalty? So indicate. All right. This is just to save time.

Mr. Cronin: For cause, your Honor. I think their
743 names should be listed as they come out of the box.

The Court: Yes. Step out and give your name.

Prospective Juror Ahlert: John Ahlert.

Prospective Juror Andrews: Dorothy Andrews.

Prospective Juror Barmann: Edward Barmann.

Prospective Juror Alisauskas: Carmella Alisauskas.

Prospective Juror Hart: Austin Hart.

The Court: All right, call other jurors.

* * *

The Court: 245, step forward, please.

Do you have any conscientious or religious scruples against the infliction of the death penalty?

Prospective Juror 245: Yes, sir.

744 The Court: All right, you will be excused for cause. What's your name?

Prospective Juror 245: James Wilson.

The Court: Just stand on the side.

(Prospective juror excused.)

* * *

The Court: Call another juror.

The Clerk: 242.

The Court: Do you have any conscientious or religious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 242: Yes, I do.

The Court: You do? You may be excused for cause.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 213.

The Court: Let me ask you: Do you have any conscientious or religious scruples against the infliction of the death penalty in a proper case?

745 Prospective Juror 213: Yes, I do.

The Court: You do? You're sure of that or do you just want to get off the jury?

Prospective Juror 213: No.

The Court: You're honest about it?

Prospective Juror 213: Yes, sir.

The Court: All right, step aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 204.

The Court: Let me ask you: Do you have any conscientious or religious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 204: No, sir.

The Court: Take the box.

The Clerk: 197.

The Court: Let me ask you:—

I'm doing this just to save time. This is really the lawyers' work but I'm trying to speed this matter up.

(Continuing) Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 197: No, your Honor.

746 The Court: Take the box.

Call another juror.

The Clerk: 196.

The Court: Let me ask you: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 196: No, I don't.

The Court: Take the box.

Call another juror.

The Clerk: 191.

The Court: Let me ask you: Do you have any conscientious or religious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 191: No, sir.

The Court: Take the box.

Call another juror.

The Clerk: 186.

The Court: Let me ask you: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 186: No, sir.

The Court: Take the box.

All right, counsel, you may proceed.

747 VICTORIA BLAHA

* * *

751 Q. If you're selected as one of the twelve jurors and you have heard all the evidence and the instructions of his Honor and you're back in the jury room and it should be your opinion, along with the other eleven jurors, that the defendant Witherspoon is guilty of murder and that the proper verdict in this case is that of death in the chair, would you so say by signing a guilty verdict?

A. I would.

* * *

752 The Court: Now, this lady just taking the box: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 243: Yes, I do.

The Court: You do. All right, you may step aside.

(Prospective juror excused.)

The Clerk: 178.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 178: No.

The Court: Take the box.

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WILLIAM BEUKE

* * *

756 Q. Now, the penalties in this State, where the charge is murder, is that of death in the chair, life or any number of years from 14 upwards, such as, 199 or any number of combinations of years the juror feels proper under the law and the evidence in any
757 particular case. Do you understand that?

A. Yes, I do.

Q. Now, where the charge is murder, the jurors, in addition to determining guilt and innocence, in determining the guilt of the defendant, have the additional duty of fixing a penalty they deem proper under the law and the evidence of the case. Do you understand that, sir?

A. Yes, sir.

Q. Now, is there anything about the fact that you have to determine guilt or innocence and also fix a penalty that you'd regard as an undue hardship or burden? Would you find it an unusual hard or difficult burden to assume the fact that you'd have to determine the guilt or innocence and fix a penalty upon the determination of guilt?

A. No.

Q. Now, if you're selected as one of the twelve jurors and it should be your opinion, along with the other eleven jurors, after having heard all the evidence and the rules of law given by His Honor and you're back in the jury room, it should be your opinion, along with the other eleven, that the defendant is guilty,
758 and the next part of your deliberation is to fix a penalty, and when you're at the penalty part of the deliberations it should be your opinion, along with the other eleven jurors, that the proper verdict in this

case is that of death in the chair, based on the evidence as you have heard it here and the rules of law given by his Honor, would you so say by signing a guilty verdict?

A. Yes.

* * *

764 KENNETH STUEBE

* * *

768 Q. Now, do you have a conscientious or a religious scruple against the infliction of the death penalty in a proper case?

A. No.

The Court: I believe that all the eight jurors in the box have already answered that question.

* * *

770 Q. Now, if it should be your opinion, along with the other eleven jurors, and you have heard all the evidence from the witness stand, the rule of law by his Honor, and you're back in the jury room and it should be your opinion, based on the evidence as you have heard it, the rules of law as given by His Honor that the defendant Witherspoon is guilty of murder and the proper penalty in this case is that of death in the chair, would you say so by signing a guilty verdict and fixing the penalty at death in the chair?

A. Yes.

* * *

772 ERNEST SPARROW

* * *

776 Q. Mr. Sparrow, if you're one of the twelve jurors and it should be your opinion, based on the evidence
777 as you have heard it here and the rules of law as given by his Honor, that the defendant is guilty of the

murder of Officer Stone, based on the evidence here and the law as given by His Honor, it should be your feeling, along with the other eleven jurors, that the proper penalty in this case is death in the chair, would you so say by signing a guilty verdict?

A. Yes, sir.

* * *

JOHN BIESIADA

* * *

783 Q. Now, if it should be your opinion, along with the other eleven jurors, that death in the chair is a proper verdict in this case, would you so say by signing a guilty verdict?

A. Yes, sir.

* * *

783 HERBERT KRUMWIEDE

* * *

787 Q. And if it should be your opinion, at that phase of the jury deliberations, that death in the chair was a proper verdict in this case, based on the evidence that you have heard here and the rules of law as given by his Honor Judge Salter, would you so say by signing a guilty verdict and fixing the penalty at death in the chair?

A. Yes, sir.

* * *

788 The Court: Call another juror.

The Clerk: 159.

The Court: Do you have any religious or conscientious scruples against the inflicting of the death penalty in a proper case?

Prospective Juror 159: Yes, I do.

The Court: All right, you may step aside. Challenge for cause.

Call another juror.

The Clerk: 151.

The Court: This last gentleman called into the box. Do you have any religious or conscientious scruples against the inflicting of the death penalty in a proper case?

Prospective Juror 151: No.

The Court: All right, take the box.

* * *

789 HAZEL SEDIVY

* * *

795 Q. If, based on the evidence as you heard it here on the witness stand and the rules of law given by his Honor Judge Salter, it should be your opinion that the defendant is guilty of murder and that the proper verdict here is death in the chair, would you so say by signing a guilty verdict?

A. Yes, sir.

* * *

798 The Court: . . . This last juror that is taking the box. Let me ask you this question: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 141: None, your Honor.

The Court: You may sit down.

* * *

806 The Court: Call some other jurors.

The Clerk: 140.

The Court: Now, this lady who just entered the box. Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 140: I have.

The Court: You do. All right. You may stand aside. A challenge for cause.

807 (Prospective juror excused.)

The Clerk: 137.

The Court: 137, come forward, please.

Let me ask you: Do you have any religious or conscientious scruples against the infliction of the death penalty?

Prospective Juror 137: Yes, sir, I do.

The Court: You say you do. Very well, for cause.

(Prospective juror excused.)

The Clerk: 133.

The Court: Let me ask you: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 133: No, I don't, your Honor.

The Court: Take the box.

Call another juror.

The Clerk: 131.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 131: I do.

The Court: You say you do?

Prospective Juror 131: Yes, sir.

The Court: Very well, you may step aside.

808 (Prospective juror excused.)

The Court: Call another juror.

The Clerk: 130.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 130: No, I don't.
The Court: You may take the box.

* * *

814 ALMA RUFF

* * *

817 Q. Now, if it should be your opinion, along with the other eleven jurors, and you're at that phase of your deliberations with reference to fixing the penalty
818 you deem proper in this case,— it should be your opinion, along with the other eleven jurors, that the defendant Witherspoon should be given death in the chair, would you so say by signing a guilty verdict?
A. I would.

* * *

818 PATRICIA SCHRICKER

* * *

823 Q. Now, if it should be your opinion, along with
823A the other eleven jurors, upon having arrived at your deliberations, that the defendant is guilty and that death in the chair was a proper verdict in this case, would you so say by signing a guilty verdict and fixing the penalty at death in the chair?
A. Yes, sir.

* * *

The Court: All right, call another juror.
The Clerk: 129.

* * *

The Court: Let me ask you: Do you have any religious or conscientious scruples against the death penalty in a proper case?
Prospective Juror 129: Yes, sir, I do.
The Court: All right, stand aside.

Call another juror.

The Clerk: 118.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 118: I do, sir.

824 The Court: You do?

Prospective Juror 118: Yes, sir.

The Court: You may stand aside.

(Prospective juror excused.)

The Clerk: 114.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 114: Yes, I do.

The Court: You're sure of that? You're just not trying to get out of service on this jury?

Prospective Juror 114: No, sir.

The Court: All right, call another juror.

(Prospective juror excused.)

The Clerk: 109.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 109: No, sir.

The Court: You may take the box.

* * *

RICHARD OESTERLIN

* * *

828 Q. And, having arrived at that point in your deliberations, if it should be your opinion, along with the other 11 jurors, that this is properly a case for the fixing of the death penalty, would you so say by

829 signing a guilty verdict and signing a death verdict in the chair?

A. I would.

• • •

830 The Court: Call another juror.

The Clerk: 66.

The Court: Let me ask you this question: Do you have a religious or conscientious scruple against the infliction of the death penalty in a proper case?

Prospective Juror 66: I do.

The Court: You do?

Prospective Juror 66: Yes, sir.

The Court: All right, you may stand aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 36.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty

831 in a proper case?

Prospective Juror 36: No, I don't.

The Court: You may take the box.

• • •

831 ROSE MASCIA

• • •

841 Q. Now, at that point in your deliberations, if it should be your opinion, along with the other eleven jurors, that the proper verdict in this case is that of death in the chair for Witherspoon, would you so say by signing that type of a verdict?

A. Yes, sir.

• • •

The Court: Call another juror.

The Clerk: 33.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 33: Yes, I do.

The Court: All right, you may stand aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 14.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 14: Yes, sir, I do.

842 The Court: You say you do?

Prospective Juror 14: Yes, sir.

The Court: How long have you held such an opinion?

Prospective Juror 14: Since I have been going to school.

The Court: You don't believe in the infliction of the death penalty?

Prospective Juror 14: No, sir.

The Court: All right, stand aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: No. 9.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 9: Yes, sir.

The Court: You do? Stand aside.

(Prospective juror excused.)

* * *

845 The Court: . . . I think that I should also state that, in this case, the State is qualifying the jury on the death penalty and that if any of you have a religious or conscientious scruple against the infliction
846 of the death penalty in a proper case you should volunteer that information.

You may call twelve jurors into the box.

* * *

847 The Court: You may call another juror in the box.

The Clerk: 241, please step into the jury box.

The Court: Let me ask you: Do you have any
848 religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 241: Yes, sir.

The Court: You say you do?

Prospective Juror 241: Yes, sir.

The Court: How long have you entertained such views?

Prospective Juror 241. I don't believe in it, sir.

The Court: You just don't believe in it?

Prospective Juror 241: That's right.

The Court: Very well. You'll be excused in the case.

(Prospective juror excused.)

The Clerk: Juror 233.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Juror 233: No, I don't believe so.

The Court: Very well. Take the box.

* * *

849 The Court: And we have called the juror into the box and he has announced he has no scruples against the death penalty, so you may proceed.

* * *

850 ALETHA KREIS

* * *

856 Q. And, having arrived at that point in your deliberations, should it be your opinion, along with the other jurors, under the law and the evidence in this case, that this is the proper case for Witherspoon to be given the death chair, would you say so by signing a guilty verdict?

A. Yes, sir.

* * *

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 226: I think my conscience would bother me.

857 The Court: You don't believe in the death penalty?

Prospective Juror 226: No, I don't.

The Court: Even though it is the law of the State?

Prospective Juror 226: That's right.

The Court: You may stand aside.

(Prospective juror excused.)

The Clerk: 223.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 223: Yes.

The Court: You do? You may step aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 212.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 212: No, sir, I don't.

• • •

858 ETTA BURDA

• • •

864 Q. If it should be your opinion, along with the other eleven jurors, based on the evidence in this case and the rules of law as given by the court, that the defendant is guilty as charged and that death in the chair is a proper verdict in this case, would you so say by signing a guilty verdict?

A. Yes, sir.

• • •

867 The Court: All right, call another juror.

The Clerk: 187.

868 The Court: Do you have any religious or conscientious scruples against the inflicting of the death penalty in a proper case?

Prospective Juror 187: Yes, sir, I have.

The Court: You have entertained that view for some time?

Prospective Juror 187: As long as I could, yes, sir.

The Court: You don't believe in the death penalty?

Prospective Juror 187: No, sir.

The Court: All right, step aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 169.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 169: Well, I certainly do.

The Court: All right, step aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 166.

The Court: It's not the Judge's province to ask these questions. I'm just doing it to help speed
868 things up.

Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 166: No, sir.

The Court: You make take the jury box.

* * *

877 The Court: Call another juror.

The Clerk: 161.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 161: Yes, I do.

The Court: You do. All right, stand aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 160.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 160: I do.

The Court: You do. All right, stand aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 156.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penal-
878 ty in a proper case?

Prospective Juror 156: No, I don't.

The Court: Take the box.

• • •

882 JOHN TOLAN

• • •

886 Q. And if it should be your opinion and your fellow jurors that death in the chair was a proper
887 verdict in this case,—

Mr. Cernek: I object.

Mr. Kissane: Q. (Continuing)—would you sign that type of a verdict?

A. Yes, I would.

• • •

889 The Court: Do you have any religious or conscientious scruple against the infliction of the death penalty in a proper case?

Prospective Juror 162: No, I don't, your Honor.

The Court: Take the box.

FRED RACINE

• • •

892 Q. If it should be your opinion that death in the chair is a proper verdict in this case, would you say so by signing that type of verdict?

A. I would.

• • •

The Court: Call another juror.

The Clerk: 143.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 143: Yes, I do.

The Court: All right, step aside.

(Prospective juror excused.)

893 The Court: Call another juror.

The Clerk: 119.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 119: Yes, sir.

The Court: You do?

Prospective Juror 119: Yes.

The Court: Very well. Step aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 106.

The Court: Those of you in the back rows, come forward here, come up a little closer, (indicating) please. Let's get a little chummier.

Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 106: No, sir.

The Court: All right, take the box.

* * *

899 The Court: Let's call another juror.

The Clerk: 105.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

The Court: Call another juror.

The Clerk: 156.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penal-
878 ty in a proper case?

Prospective Juror 156: No, I don't.

The Court: Take the box.

• • •

882 JOHN TOLAN

• • •

886 Q. And if it should be your opinion and your fellow jurors that death in the chair was a proper
887 verdict in this case,—

Mr. Cernek: I object.

Mr. Kissane: Q. (Continuing)—would you sign that type of a verdict?

A. Yes, I would.

• • •

889 The Court: Do you have any religious or conscientious scruple against the infliction of the death penalty in a proper case?

Prospective Juror 162: No, I don't, your Honor.

The Court: Take the box.

FRED RACINE

• • •

892 Q. If it should be your opinion that death in the chair is a proper verdict in this case, would you say so by signing that type of verdict?

A. I would.

• • •

The Court: Call another juror.

The Clerk: 143.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 143: Yes, I do.

The Court: All right, step aside.

(Prospective juror excused.)

893 The Court: Call another juror.

The Clerk: 119.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 119: Yes, sir.

The Court: You do?

Prospective Juror 119: Yes.

The Court: Very well. Step aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 106.

The Court: Those of you in the back rows, come forward here, come up a little closer, (indicating) please. Let's get a little chummier.

Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 106: No, sir.

The Court: All right, take the box.

* * *

899 The Court: Let's call another juror.

The Clerk: 105.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 105: No, I haven't.

The Court: Take the box.

• • •

900 PAUL G. ONGENA

• • •

902 Q. And if it should be your opinion, along with the other eleven jurors, at this point in your de-
903 liberations that death in the chair is a proper verdict, would you so say by signing that type of verdict?

A. Yes, sir.

• • •

904 The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 104: No, I don't.

The Court: You may take the box.

• • •

910 ALBERT J. KLEIN

• • •

911 Q. If your're one of the twelve jurors and you have heard all the evidence and it's your opinion, along with the other eleven, that the defendant Witherspoon murdered Officer Stone and that the proper verdict is that of death in the chair, would you so say by signing a guilty verdict and fixing that type penalty?

A. Yes.

• • •

913 FRANK MORRISON

* * *

916 Q. And if the penalty that you and your fellow jurors deemed proper was death in the chair, would you so say by signing that type of a verdict?

A. Yes, sir.

916 NANCY KENNEY

* * *

920 Q. Now, if it should be your opinion, along with the other eleven, based on the evidence here as you have heard it and the rules of law as given by the judge, that the defendant Witherspoon should be found guilty of murder and that the proper penalty is that of death in the chair, would you so say by signing the guilty verdict of that type?

A. Yes, sir, I would.

* * *

924 The Court: Do you have a religious or conscientious scruple against the infliction of the death penalty in a proper case?

Prospective Juror 98: No.

The Court: Take the box.

* * *

929 The Court: Do you have a religious or conscientious scruple against the infliction of the death penalty in a proper case?

Prospective Juror 97: Yes, I do.

The Court: You do?

Prospective Juror 97: Yes, I do.

The Court: You don't believe in the death penalty?

Prospective Juror 97: No. It's just I wouldn't want to be responsible.

The Court: That isn't it. No. Maybe you don't like to be a juror at all, but, then, that's your duty as a citizen. Now, answer my question: Do you have a religious or conscientious scruple against the infliction of the death penalty in a proper case?

Prospective Juror 97: No, I haven't.

The Court: All right, take a seat.

• • •

932 The Court: I just don't believe you like to be a juror.

The Prospective Juror [97]: Well, that isn't the idea. I just don't feel I'd like to be responsible for putting—

The Court: None of us do.

The Prospective Juror [97]: (Continuing)—deciding somebody should be put to death. I don't feel like it's my responsibility. I mean, my conscience.

The Court: Step aside, step aside.

(Prospective juror excused.)

The Clerk: 95.

The Court: And do you have a religious or conscientious scruple against the infliction of the death penalty in a proper case?

933 Prospective Juror 95: No, sir.

The Court: Take a seat.

SYLVIA HYBIAK

• • •

936 Q. And if it should be your opinion, along with the other eleven jurors, that the proper verdict in this case is death in the chair, would so say by signing that type of a verdict?

937 A. Yes, sir.

* * * *

The Court: Call another juror.

The Clerk: No. 91.

The Court: Do you have any religious or conscientious scruples against the imposition of the death penalty in a proper case?

Prospective Juror 91: No, sir.

The Court: Take a seat.

RICHARD HOLZHAUSSER

* * *

941 Q. And, having arrived at that point in your deliberations, do you understand that you have the additional duty of fixing the penalty that you and your fellow jurors deemed proper under the law and the evidence in this case? Do you understand that, sir?

A. Yes, sir.

Q. And that the penalties you're required to consider are death in chair life or any number of years more than fourteen? Do you understand that?

A. Yes, sir.

Q. Now, if it should be your opinion, along with the other eleven jurors, that the defendant is guilty as charged in the indictment of the murder of Officer Stone and that death in the chair is the proper penalty under the law and the evidence in this case, would you so say by signing a guilty verdict?

A. Yes, sir.

* * *

944 The Court: To save time, I want to ask you this question:—It's really the lawyer's duty but, then, I'm pinch hitting for both sides here—Do you have any

religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 86: Yes, I do.

The Court: It doesn't make any difference what the evidence is, you'd never vote for the death penalty?

Prospective Juror 86: No.

The Court: All right, you may be excused.

945 (Prospective juror excused.)

The Clerk: 84.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty?

Prospective Juror: No, sir.

The Court: Take the box.

Call another juror.

The Clerk: 77.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 77: No, sir.

The Court: Take the box.

Call another juror.

The Clerk: 76.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 76: No, your Honor.

The Court: Take the box.

Call another juror.

The Clerk: 75.

The Court: Do you have any religious or conscientious scruples against the infliction of the death pen-

946 alty in a proper case?

Prospective Juror 75: No, sir.

The Court: Take the box.

All right, counsel, you may proceed.

• • • •

966 The Court: Call another juror.

The Clerk: 72.

The Court: Do you have a religious or conscientious scruple against the infliction of the death penalty in a proper case?

Prospective Juror 72: No, sir.

The Court: Take the box.

• • • •

969 The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 71: No, sir.

The Court: Take the box.

• • •

973 JOHN HAYES

• • • •

976 Q. Now, should it be your opinion, along with the other eleven jurors, based on the evidence as you have heard it and the rule of law as given by His Honor, that death in the chair is a proper verdict in this case, based on the law and the evidence as you have heard it here, would you so say by signing a verdict fixing the penalty at death in the chair?

A. Yes, sir.

Q. If you had any reservations in your mind, you'd tell us at this time, is that correct?

A. Yes, sir.

• • •

977 HERBERT GROSS, JR.

• • •

982 Q. Now, if it should be your opinion, along with the other eleven jurors, based on the evidence as you have heard it here and the rules of law as given by his Honor, that death in the chair is a proper verdict, under the law and the evidence in this case, would you so say by signing a guilty verdict and fixing death in the chair as the penalty?

A. Yes.

• • •

987 CARL GEHRKE

• • •

989 Q. If it should be your opinion, along with the other eleven, having arrived at that point in your deliberations, that death in the chair was a proper verdict, under the law and the evidence in this case, would you so say by signing that type of a verdict?

A. Yes.

• • •

The Court: Call another juror.

The Clerk: No. 70.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 70: Yes, I have, your Honor.

The Court: How do you entertain such scruples?

Prospective Juror 70: Well, I have been a Catholic all my life and I don't believe in the death penalty, that's all.

The Court: It isn't against your religion, is it?

Prospective Juror 70: No, it isn't.

The Court: Then it's a personal opinion?

Prospective Juror 70: Yes, sir.

The Court: As I understand you, it's not just
991 getting off of service?

Prospective Juror 70: No, sir.

The Court: You disbelieve it, regardless of what the evidence is? We don't know what the evidence is in this case, but it's a murder charge and we don't know, from the evidence, whether the death penalty warrants it. The State is qualifying, as you heard, for the death penalty. But your position is that you wouldn't vote for the death penalty in any case?

Prospective Juror 70: No, sir.

The Court: You may stand aside.

(Prospective juror excused.)

The Clerk: 68.

The Court: Do you have a religious or conscientious scruple against the infliction of the death penalty in a proper case?

Prospective Juror 68: No, sir.

The Court: You may take the box.

MARIE FLANAGAN

* * *

998 Q. Now, if it should be your opinion, along with the other eleven jurors, having arrived at that point in your deliberations, that the defendant is guilty of murder and that the proper penalty in this case, based on the evidence as you have heard it and the rule of law as given by his Honor, that death in the chair is a proper verdict, would you so say by signing that verdict?

A. Yes, sir.

* * *

999 The Court: Call another juror.

The Clerk: 67.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty?

Prospective Juror 67: No, your Honor.

The Court: All right, take the box.

HARRY FISET

* * *

1005 Q. Now, should it be your opinion, along with the other eleven jurors on this case, based on the evidence as you heard it and the rule of law given by his Honor, that the defendant Witherspoon should be sentenced to death in the chair, would you so say by signing that type of verdict?

A. Yes, sir.

* * *

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 63: Yes, sir.

1006 The Court: All right, you may step aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 47.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty in a proper case?

Prospective Juror 47: No, sir, I do not.

The Court: All right, take the stand.

* * *

1011 WAT T. CLUVERIUS

• • •

1016 Q. Now, at that phase of the deliberations as a juror, if it should be your opinion, along with the other eleven jurors, that this is a proper case for fixing the penalty at death in the chair for the defendant Witherspoon, for the murder of Officer Stone, would you so say by signing a guilty verdict and fixing death in the chair as the penalty?

A. Yes, I would.

• • •

1017 The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty?

Prospective Juror 46: I do.

The Court: Stand aside.

1018 (Prospective juror excused.)

The Court: Call another juror.

The Clerk: 40.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty?

Prospective Juror: Yes, I do.

The Court: Stand aside.

(Prospective juror excused.)

The Court: Call another juror.

The Clerk: 39.

The Court: Do you have any religious or conscientious scruples against the infliction of the death penalty?

Prospective Juror 39: No, sir.

The Court: Take the box.

• • •

1020 NED CALDERONE

• • •

1025 Q. Now, at that phase of your deliberations as a juror, if it should be your opinion, along with the other eleven jurors, that the defendant Witherspoon is guilty of the murder of Officer Mitchell Stone and the proper penalty here is that of death in the chair, would you sign that type of a verdict?

A. Yes, sir.

• • •

APPENDIX 2

STATUTORY PROVISIONS REGARDING CHALLENGES FOR CAUSE BY REASON OF VIEWS CONCERNING THE DEATH PENALTY.

Statutes Not Requiring Connection Between Views and Verdict.

ALABAMA

Additional ground of challenge in certain cases in favor of state.—On the trial for any offense which may be punished capitally, or by imprisonment in the penitentiary, it is a good cause of challenge by the state that the person has a fixed opinion against capital or penitentiary punishments, or thinks that a conviction should not be had on circumstantial evidence; which cause of challenge may be proved by the oath of the person, or by other evidence.

Ala. Code, Title 30, §57 (1959).

GEORGIA

Questions on voir dire on trial for felony.—On trials for felonies any juror may be put upon his voir dire and the following questions shall be propounded to him, *viz*:

* * *

3. "Is your mind perfectly impartial between the State and the accused?" If the juror shall answer this question in the affirmative, he shall be adjudged and held a competent juror in all cases where the offense does not involve the life of the accused; but when it does involve the life of the accused, the following additional question shall be put to him:

4. "Are you conscientiously opposed to capital punishment?" If he shall answer this question in the negative,

he shall be held a competent juror: Provided, nevertheless, that either the State or the defendant shall have the right to introduce evidence before the judge to show that the answers, or any of them, are untrue; and it shall be the duty of the judge to determine upon the truth of such answers as may be thus questioned before the court.

Ga. Code Ann., §59-806 (1965).

LOUISIANA

Causes for challenge by the state

It is good cause for challenge on the part of the state, but not on the part of the defendant, that:

* * * *

(2) The juror tendered in a capital case has conscientious scruples against the infliction of capital punishment;

* * * *

La. Code Crim. P., Art. 798 (1966).

TEXAS

* * *

(b) A challenge for cause may be made by the State for any of the following reasons:

1. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime, in a capital case, where the State is seeking the death penalty;

* * * *

Tex. Code Crim. P. Ann., Art. 35.16 (1966).

See also Kansas Gen. Stat. Ann., § 62-1405 (1964), Montana Rev. Codes Ann., § 95-1909(d)(2) (ix) (1967), and Utah Code Ann. § 77-30-19 (12) (1953), set out below.

Statutes Requiring Connection Between Views and Verdict on Penalty Issue.

INDIANA

Challenges for causes.—The following shall be good causes for challenge to any person called as a juror in any criminal trial:

* * *

Third. If the offense charged be punishable with death, that he entertains such conscientious opinions as would preclude his affixing the death penalty if the defendant should be found guilty.

* * *

Ind. Ann. Stat. § 9-1504 (1956).

Statutes Requiring Connection Between Views and Verdict On Innocence-Guilt Issue.

DELAWARE

Examination upon voir dire in capital cases

When a juror is called in a capital case, he shall be first sworn or affirmed upon the voir dire and then asked, under the direction of the Court, if he has formed or expressed any opinion in regard to the guilt or innocence of the prisoner at the bar. If his answer is in the negative, he shall be sworn as a juror in the case, unless he has conscientious scruples against finding a verdict of guilty in a case where the punishment is death, even if the evidence should so warrant him. . . .

Del. Code Ann., Title 11, §3301 (1953).

MINNESOTA

Causes of challenge for implied bias.

A challenge for implied bias may be taken for all or any of the following causes, and for no other:

• • •

(8) If the offense charged is punishable by death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror.

Minn. Stat. Ann., §631.31 (1947).

MONTANA

A challenge for cause may be taken for all or any of the following reasons; or for any other reason which the court determines:

• • •

(viii) If the offense charged be punishable with death, with entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

(ix) Having a belief that the punishment fixed by law is too severe for the offense charged.

Mont. Rev. Codes Ann. §95-1909 (d) (2). (1967).

NORTH DAKOTA

Matters constituting implied bias specified.—A challenge for implied bias of a juror may be taken for all or any of the following causes, and for no other:

• • •

8. If the offense charged is punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror;

• • •

N. D. Cent. Code Ann., § 29-17-36 (1960).

OHIO

Causes of challenging of jurors.

• • •

(C) In the trial of a capital offense, that his opinions preclude him from finding the accused guilty of an offense punishable with death;

• • •

Ohio Rev. Code Ann. §2945.25 (1954).

SOUTH DAKOTA

A challenge for implied bias may be taken for all or any of the following causes, and for no other:

• • •

(10) If the offense charged be punishable with death the entertaining of such conscientious opinions as would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror.

S. D. Code, § 34.3618 (Supp. 1960).

UTAH

For implied bias—Grounds.—A challenge for implied bias may be taken for all or any of the following causes, and for no other:

• • •

(9) If the offense charged is punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

• • •

(12) Having a belief that the punishment fixed by law is too severe for the offense charged.

Utah Code Ann. §77-30-19 (1953).

WYOMING

Causes for challenge enumerated.—The following shall be good cause for challenge to any person called as a juror on any indictment:

• • •

Third—In indictments for an offense, the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death.

• • •

Wyo. Stat. Ann. §7-224 (1957).

Statutes Requiring Connection Between Views and Verdict on Innocence-Guilt Issue, But Which Have Been Construed to Require Connection Between Views and Verdict On Penalty Issue.

ARIZONA

Grounds for individual challenges

A. Any party may challenge an individual juror upon the ground that the juror

• • •

14. If the offense charged is punishable by death entertains conscientious opinions which would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror.

Ariz. R. Crim. P. 219 (1956);
State v. *Narten*, 99 Ariz. 116, 123, 407 P.2d 81, 86 (1949), cert. denied 384 U.S. 1008.

ARKANSAS

Implied bias.—A challenge for implied bias may be taken:

* * *

Seventh. When the offense is punishable with death, the entertaining of such conscientious opinions as would preclude him from finding the defendant guilty.

Ark. Code Ann. § 43-1920 (1964);
Needham v. *State*, 215 Ark. 935, 938-39, 224 S.W.2d 785, 787 (1949).

CALIFORNIA

Causes for challenge for implied bias.

A challenge for implied bias may be taken for all or any of the following causes, and for no other:

* * *

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

Cal. Penal Code Ann. §1074 (1956);
People v. *Riser*, 47 Cal. 2d 566, 573-76, 305 P.2d 1, 5-7 (1956), appeal dismissed 358 U.S. 646.

FLORIDA

No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death shall be allowed to serve as a juror on the trial of any capital case.

Florida Stat. Ann. §932.20 (1944);
Piccott v. *State,* 116 So. 2d 626, 627-28 (1959), cert. denied 364 U.S. 293.

IDAHO

Identical to California.

Idaho Code, § 19-2020(9) (1948);
State v. *Owen,* 73 Idaho 394, 400-01, 253 P. 2d 203, 206 (1953).

KANSAS

62-1404. Jurors where offense punishable with death. If the offense charged be punishable with death, any person entertaining such conscientious opinions as would preclude his finding the defendant guilty shall not serve as a juror.

62-1405. Persons with certain scruples or opinions not to be sworn as jurors. No person who believes the punishment fixed by the law to be too severe for the offense or entertains any opinion that would preclude his finding the defendant guilty, shall be sworn as a juror.

Kan. Gen. Stat. Ann. §62-1404, 1405 (1964);
State v. *Latham,* 190 Kan. 411, 431-32, 375 P.2d 788, 803-04 (1962) cert. denied 373 U.S. 919.

MASSACHUSETTS

Opinions Disqualifying Juror in Capital Case.

A person whose opinions are such as to preclude him from finding a defendant guilty of a crime punishable with death shall not serve as a juror on the trial of an indictment for such crime.

Mass. Gen. Laws Ann., Ch. 278, § 3 (1956);
Commonwealth v. *Ladetto,* 349 Mass. 237, 246, 207 N.E. 2d 536, 542 (1965).

MISSOURI

Death penalty—persons opposed to, may serve as jurors, when

Persons whose opinions are such as to preclude them from finding any defendant guilty of an offense punishable with death, shall be ineligible to serve as jurors on the trial of an indictment or information charging any such offense, unless such disqualification is waived by the representative of the state when selecting the jury in any such case.

Mo. Rev. Stat. Ann., §546.130 (1953);
State v. *Pinkston,* 336 Mo. 614, 618-19, 79 S.W.2d 1046, 1049 (1935).

NEBRASKA

Challenges for cause. The following shall be good causes for challenge to any person called as a juror or alternate juror, on the trial of any indictment:

• • • •

(3) in indictments for an offense the punishment whereof is capital, that his opinions are such as to preclude

him from finding the accused guilty of an offense punishable with death;

• • •

Neb. Rev. Stat., §29-2006 (1964);
Rhea v. *State*, 63 Neb. 461, 365-76, 88 N.W. 789, 790-93 (1902).

NEW YORK

Grounds of challenge for implied bias

A challenge for implied bias may be taken for all or any of the following causes, and for no other:

• • •

8. If the crime charged may be punished with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Code Crim. P. §377 (Supp. 1967);
People v. *Fernandez*, 301 N.Y. 302, 320-1, 93 N.E. 2d 859, 868-9 (1950), cert. denied 340 U.S. 914.

OKLAHOMA

Implied bias, challenge for

A challenge for implied bias may be taken for all or any of the following cases, and for no other:

• • •

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty of, in which case he shall neither be permitted nor compelled to serve as a juror.

Okl. Stat. Ann., Title 22, §660 (1937);
Smith v. *State*, 50 Okl. Cr. 282, 114 Pac. 350, 351 (1911).

VIRGINIA

When person opposed to capital punishment disqualified —A person whose opinions are such as to prevent his convicting anyone of an offense punishable with death shall not be allowed to serve as a juror on a trial for such offense.

Va. Code Ann. §19.1-210 (1960);
Hampton v. *Commonwealth,* 190 Va. 531, 548-49, 58 S.E.2d 288, 294-95 (1950), cert. denied 339 U.S. 989.

WASHINGTON

Challenge for cause — Capital case — Conscientious scruples. No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death shall be compelled or allowed to serve as a juror on the trial of any indictment or information for such an offense.

Wash. Rev. Code Ann., §10.49.050 (1961);
State v. *Riley,* 126 Wash. 256, 218 Pac. 238, 239-41 (1923).

APPENDIX 3

EXCERPTS FROM PUBLIC OPINION POLLS ON CAPITAL PUNISHMENT

THE PUBLIC PULSE

By Elmo Roper And Associates

(For release on or after February 9, 1958)

DEATH SENTENCE NOT FAVORED

Despite the fact that our world has become all too familiar with mass slaughter in war, death of a specific individual by legal execution still bothers the conscience of man. Some countries have abolished capital punishment, and some states in our country have done so. While the death sentence still has a good deal of support, the weight of American public opinion is against execution as a punishment for even the most serious crimes. Here is the way a recent nationwide cross section split on this issue:

> Certain states have abolished the death sentence. Do you think people who have been convicted of the worst crimes, like murder, should be executed, or do you think the heaviest penalty given anyone should be life imprisonment?

For death sentence	42%
Against death sentence	50
Express no opinion	8

Opposition to the death penalty is strongest among the lower economic groups. Fifty-three per cent at the lowest economic levels oppose it, while its opponents among the higher economic levels are only 42 per cent. The charge has been made that it is the poor and friendless who most often pay the ultimate penalty. A feeling that the better off have a better chance at justice may underlie the attitudes of the lower income groups. This sense of unequal justice may also influence the thinking of Negroes, 78 per cent of whom are opposed to capital punishment.

GALLUP POLITICAL INDEX

'Report No. 13, 9.16. June, 1966

DEATH PENALTY

Question: "Are you in favor of the death penalty for persons convicted of murder?"

JUNE, 1966

	Yes, in Favor	No	No Opinion
	%	%	%
NATIONAL	42	47	11
Sex			
Men	47	45	8
Women	38	49	13
Race			
White	44	46	10
Non-white	x	x	x
Education			
College	46	46	8
High School	41	48	11
Grade School	42	46	12
Occupation			
Prof. & Bus.	43	48	9
White Collar	57	30	13
Farmers	40	44	16
Manual	40	50	10
Age			
21 - 29 years	40	50	10
30 - 49 years	43	45	12
50 & over	43	47	10

Religion			
Protestant	42	48	10
Catholic	44	45	11
Jewish	x	x	x
Politics			
Republican	51	40	9
Democrat	39	51	10
Independent	41	48	11
Region			
East	45	43	12
Midwest	42	48	10
South	35	53	12
West	50	42	8
Income			
$7,000 & over	45	47	8
$5,000 - $6,999	41	50	9
$3,000 - $4,999	42	40	18
Under $3,000	40	50	10
Community Size			
500,000 & over	43	43	14
50,000 - 499,999	43	49	8
2,500 - 49,999	47	44	9
Under 2,500, Rural	39	51	10

LOUIS HARRIS and ASSOCIATES, INC.
JULY, 1966

THE DEATH PENALTY

On Capital Punishment, the cross-section was asked:

"Some states have abolished capital punishment—executing persons who commit a murder—and have substituted life imprisonment instead. Do you favor or oppose capital punishment?"

Capital Punishment

	Favor %	Oppose %	Not sure %
Nationwide	38	47	15
By education			
8th grade or less	32	52	16
High school	28	46	16
College	44	44	12
By size of place			
Cities	37	46	17
Suburbs	48	37	15
Towns	30	56	14
Rural	33	52	15
By sex			
Men	44	43	13
Women	31	51	18

It is surprising that the less well-educated, more rural and small town resident — women especially — carry the day against capital punishment. The more affluent parts of society, especially among men and suburban dwellers, are more in favor of continuing capital punishment.

APPENDIX 4

EXCERPTS FROM STUDIES OF THE RELATIONSHIP BETWEEN ATTITUDES TOWARD CAPITAL PUNISHMENT AND "PROSECUTION-PRONENESS" ON THE ISSUE OF GUILT OR INNOCENCE

BELIEF IN CAPITAL PUNISHMENT AND JURY PERFORMANCE[1]

W. Cody Wilson

University of Texas

The Problem

Oberer has raised the question, "Does disqualification of jurors for scruples against capital punishment constitute denial of fair trial on issue of guilt?" He reviews the legal precedents and arguments and draws two conclusions: 1) the question has never been squarely presented to any court; and 2) due process is not a static concept so that when the issue is presented the testimony of expert witness from psychology may be relevant.

While the question raised by Oberer is a legal one, a closely related question may be answered by psychological research: Do people who believe in capital punishment differ from those who have scruples against capital punishment in other psychological characteristics relevant to the jury trial process?

A study of 187 junior and senior college students was carried out in the spring of 1964 in order to provide an answer to the general question.

The Study

The general question was differentiated into several more specific questions; do people who believe in capital punish-

ment differ from those with scruples against capital punishment in terms of: a) tendency to say guilty in response to simulated capital cases; b) confidence in decisions of guilt and innocence; c) degree of punishment (excluding death penalty) recommended; d) bias in favor of the prosecution and against the defendant; and e) bias against insanity as a defense plea.

Information was obtained from the students by means of a questionnaire that contained several different parts.

One part of the questionnaire was composed of a series of simulated capital cases; that is, brief written descriptions of the facts presented to the jury in five criminal court cases. The individual was asked to assume that he is a member of the jury before which the case is being tried and, on the basis of the facts and his interpretation and evaluation of them, to reach a decision of guilt or innocence. He was also asked to indicate the degree of confidence that he had in each decision. The cases involved rape and murder, burglary and murder, robbery and murder, rape, and domestic homicide. The number of cases in which the verdict of guilty was reached was used as an index of the tendency to say guilty.

The subjects were also asked the question the answer to which forms the basis of a challenge for cause, "Do you have conscientious scruples against the death penalty, or capital punishment for a crime?" The answers were either yes or no.

The subjects were asked to agree or disagree with a series of statements such as:

a) The district attorney's interpretation of the facts in a criminal case are usually more reliable than the defense lawyer's.

b) If two witnesses gave conflicting testimony in a criminal case, I would probably believe the witness for the prosecution rather than the witness for the defense.

c) If I were a member of a jury, I could never vote "not guilty" for a man whose defense was insanity.

d) The plea of "not guilty by reason of insanity" is a loophole that allows many criminals to escape punishment.

The number of statements, similar to the first two, that the subject agreed with was used as a measure of the tendency to be biased in favor of the prosecution. The number of statements, similar to the latter two, that the subject agreed with was used as a measure of the tendency to be biased against insanity as a defense plea. There were eight statements of the first type and seven of the second type.

Lastly, the subjects were asked to assume that the jury had agreed upon a verdict of guilty in each of the simulated cases. Now he was asked to recommend an appropriate punishment. The allowable punishments ranged from suspended sentence to life imprisonment but did not include the death penalty. Each subject was given a score based on the amount of punishment recommended.

The subjects were divided into two groups based on their answer to the question, "Do you have conscientious scruples against capital punishment?", and the two groups were compared in terms of their responses to the other questions.

The Results

People who have scruples against capital punishment are less likely to say guilty than are people who believe in capital punishment.

Relationship Between Belief in Capital Punishment and Tendency to Say Guilty

# of Cases Guilty		Scruples Against C. P.	Believe in C. P.
	0,1,2	23	7
	3,4	65	50
	5,6	18	24

$X^2 = 8.4$; $P < .02$

People who believe in capital punishment are more confident of their decisions of guilt and innocence than are people who have scruples against capital punishment.

Relation Between Belief in Capital Punishment and Confidence in Decision

Confidence in Decision		Scruples Against C. P.	Believe in C. P.
	Low	22	13
	Medium	70	46
	High	13	22

$X^2 = 7.1$; $P < .05$

That is, people who believe in capital punishment are not only more likely to say guilty, they are also more sure that they are right in their decision.

People who believe in capital punishment are likely to assess a more severe punishment—even without the death penalty—than are people who have scruples against capital punishment.

Relation Between Belief in Capital Punishment and Severity of Punishment

Severity of Punishment	Scruples Against C. P.	Believe in C. P.
Low	22	3
Medium	52	31
High	32	47

$\chi^2 > 15$; $P < .001$

People who believe in capital punishment are more likely to be biased in favor of the prosecution than are people who have scruples against capital punishment.

Relation Between Belief in Capital Punishment and Bias in Favor of Prosecution

# of "Prosecution" Items Accepted	Scruples Against C. P.	Believe in C. P.
0,1	67	41
2-8	39	40

$X^2 > 3.1$; $P < .10$

People who believe in capital punishment are more likely to be biased against insanity as a defense than are people who have scruples against capital punishment.

Relationship Between Belief in Capital Punishment and Bias Against Insanity as Defense

# of Bias Against Insanity Items Accepted	Scruples Against C. P.	Believe in C. P.
0,1,2	69	43
3-7	37	38

$X^2 > 3$; $P < .10$

Similar results were found for a similar group of 61 students in New York City.

Conclusions

If we may assume that the observed relationships between these variables hold among the adult population at large (and it is generally found that relationships among such value and behavior items are stronger among adults in general than among college students), then we may conclude that a jury selected by systematically excluding people who have scruples against capital punishment is biased in the direction of being mere likely to bring a verdict of guilty, being more confident of this decision of guilt, favoring the prosecution in opposition to the defense, being prejudiced against the plea of not guilty by reason of insanity, and assessing a more severe punishment excluding the death penalty.

If the existence of such systematic biases in juries as a result of the selection process constitutes denial of fair trial, then disqualification of jurors for scruples against capital punishment does constitute denial of fair trial.

ATTITUDE TOWARD CAPITAL PUNISHMENT AND BEHAVIOR AS A JUROR IN SIMULATED CAPITAL CASES

Faye J. Goldberg
Morehouse College

METHOD: To determine the relationship between attitudes toward the death penalty and the types of decisions made by jurors in capital cases a questionnaire describing sixteen simulated cases in which the death penalty might be given was administered to 200 male and female college students, 100 Negro and 100 white. The subjects were asked to make a judgment of guilt or innocence in each case with the possibility of judging Not Guilty by Reason of Insanity, Guilty of First Degree Murder, etc.

In cases judged Guilty they were asked to set the penalty which could range from probation to death. In addition they were asked to answer Yes or No to the question, Do you have conscientious scruples against the use of the death penalty.

RESULTS: 1. Subjects who said they did not have conscientious scruples against the death penalty, as compared with those that stated that they did have such scruples, are:

a. More likely to convict
(Subjects who stated they had no scruples against the death penalty found a verdict of guilty in 75% of the cases as opposed to 69% of the cases in the group that professed scruples against the death penalty.)

b. More likely to convict for a more serious crime
(The group with no death penalty scruples found the defendant guilty of first degree murder in 48% of their convictions; the group having scruples against the death penalty returned a verdict of first degree murder in 41% of the cases.)

c. Less likely to judge Not Guilty by reason of insanity
(9% of the cases were so judged by the "no scruples" group; 14% by the "scruples" group)

d. More likely to impose harsher sentences
(73% of the cases judged Guilty by the "no scruples" group received a

sentence of Death or Life Imprisonment; 58% of the cases judged Guilty by the group with scruples against the death penalty received such a sentence.)

2. In answer to the question, Do you have conscientious scruples against the use of the death penalty?, 61% responded affirmatively. There was a marked racial difference: 76% of the Negro subjects said that they held such scruples and 47% of the white subjects. Also, slightly more women than men opposed the death penalty (64%: 59%).
3. There was marked inconsistency between the answers given by the subjects to the direct question on scruples against the death penalty and their administration of death sentences in the simulated cases. Forty-two percent of the subjects who replied affirmatively to the question contradicted themselves by imposing one or more death sentences in the simulated cases. Of these "contradictory" subjects, 90% were Negro.
4. Racial differences disappeared when the subjects were compared on "actual" use of the death penalty in the simulated cases.
5. In comparing only those subjects who were consistently against the death penalty, both in response to the direct question and in the simulated cases, with those who were consistently for the death penalty, the above findings (1, a, b, c) continued to hold but were more sharply emphasized.